IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.323 OF 2004
IN
THE BOMBAY CITY CIVIL COURT AT BOMBAY
IN
NOTICE OF MOTION NO.86 OF 2004
IN
S.C.SUIT NO.431 OF 2004

Girdhari Shankarlal Purohit).. Appellant

Versus

Indra Bahadur Singh and others).. Respondents

Mr.M.V.Holmagi for the Appellant.

Mr.A.M.Sarogi for Respondent No.1.

Mr.Sailesh Thakkar for Respondent Nos.2 and 3.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 6TH DECEMBER 2004

P.C.:

. This Appeal From Order has been filed against the order of the trial Court directing that the keys of the suit flat be handed over to Defendant Nos.3 and 4-Respondent Nos.2 and 3 herein, who were interveners in the Suit. There is a dispute as to whether the real owners of the flat are Defendant Nos.3 and 4 or the suit flat has been sold by one Radhaben Samani through her Attorney to the Appellant who has in turn given it on licence to Respondent No.1 herein. Defendant Nos.3 and 4

claim to be the son and grand-daughter of Radhaben Samani. The trial Court has directed that the keys of the suit flat, which were deposited in the Court, be returned to Defendant Nos.3 and 4 which were deposited in the Court. In my view, at this juncture it is difficult to decide as to whether the flat was in fact sold by Radhaben Samani through her Constituted Attorney to the Appellant or that Defendant Nos.3 and 4 had derived a title to the flat, without there being any evidence on record. The Suit has been filed by Respondent No.1 against the Appellant for a declaration that the leave and licence agreement between them is valid and subsisting. The rights of Defendant Nos.3 and 4 cannot be determined at this prima facie stage. In view of this, the order of the trial Court directing that the keys be returned to Defendant Nos.3 and 4 is quashed and set aside.

2. The trial Court shall hear the Suit expeditiously.

3. Appeal From Order disposed of accordingly.

4. In view of the Appeal From Order being disposed of, nothing survives in Civil Application Nos.430 of 2004, 767 of 2004 and 877 of 2004 and all the Civil Applications are disposed of accordingly.